

Senate Daily Reader

Friday, February 19, 1999

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State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

592C0376

HOUSE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **HB1144** - 2/8/99

Introduced by: Representatives Hunt, Crisp, Jaspers, McIntyre, Smidt, and Weber and Senators
Frederick, Albers, Brown (Arnold), and Flowers

1 FOR AN ACT ENTITLED, An Act to increase the annual front footage assessment for certain
2 township road maintenance and repairs.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 31-13-51 be amended to read as follows:

5 31-13-51. The township board of supervisors, prior to the assessment of real property within
6 the township for the next fiscal year, may levy annually for the purpose of maintaining or
7 repairing street ~~surfacing or pavement~~ surfaces, whether of a permanent type or not, a special
8 front foot assessment not to exceed ~~forty~~ eighty cents per front foot upon the real property
9 fronting and abutting ~~thereon~~ the roadway. Such assessment shall be apportioned on a front foot
10 basis and shall be levied pursuant to § 31-13-52.

1 **BILL HISTORY**

2 1/25/99 First read in House and referred to Local Government. H.J. 173

3 2/2/99 Scheduled for Committee hearing on this date.

4 2/4/99 Scheduled for Committee hearing on this date.

5 2/4/99 Local Government Do Pass Amended, Passed, AYES 13, NAYS 0. H.J. 388

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

505C0752

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED NO. **HB1196** - 2/8/99

Introduced by: Representatives Cutler and Koskan and Senator Paisley

1 FOR AN ACT ENTITLED, An Act to allow the investment council to invest certain public
2 funds and to restrict the investment of certain public funds.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 4-4-2 be amended to read as follows:

5 4-4-2. ~~"State public funds" shall mean and shall include~~ The term, state public funds, means
6 cash, checks, bills, notes, drafts, stocks, bonds, and all similar mediums of exchange which are
7 received or disbursed under law, including rules ~~or regulations~~, by a department, institution,
8 commission, ~~or~~ any other agency of state government, or any entity created for the purpose of
9 risk sharing by joint powers agreement pursuant to chapter 1-24.

10 Section 2. That § 4-5-23 be amended to read as follows:

11 4-5-23. The state investment officer is responsible for the investment of the state public funds
12 as defined in chapter 4-4. All functions, powers, and duties presently vested by law in any officer,
13 official, employee, agency, or commission which relates to the investment of the state public
14 funds and accounts enumerated in this section are transferred to the state investment officer. In
15 addition, the state investment officer may enter into agreements for the investment of cash
16 accounts, reserves, and surplus funds with public entities created for the purpose of risk sharing

- 1 pursuant to chapter 1-24. These entities' investments shall be restricted as provided in § 4-5-26.
- 2 The agreements shall provide for the transfer of money from the public entities investment pool
- 3 to the investment council expense account as provided in § 4-5-30.

1 **BILL HISTORY**

2 1/27/99 First read in House and referred to committee assignment waived. H.J. 211

3 2/1/99 Scheduled for Committee hearing on this date.

4 2/3/99 Scheduled for Committee hearing on this date.

5 2/5/99 Scheduled for Committee hearing on this date.

6 2/5/99 State Affairs Do Pass Amended, Passed, AYES 8, NAYS 0. H.J. 389

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

823C0790

HOUSE COMMERCE COMMITTEE ENGROSSED NO. **HB1258 - 2/5/99**

Introduced by: Representatives Peterson, Fischer-Clemens, Jaspers, Koetzle, and Munson
(Donald) and Senators Munson (David), Brown (Arnold), Drake, and Flowers

1 FOR AN ACT ENTITLED, An Act to exempt motor vehicle rental companies from certain
2 insurance regulations.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 58-30 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 The provisions of this chapter do not apply to any individual who, in connection with the
7 rental of a motor vehicle, provides contract options to the standard rental agreement which
8 provide motor vehicle and travel related coverages through authorized insurers for a rental
9 period not to exceed ninety days.

1 **BILL HISTORY**

2 1/29/99 First read in House and referred to Commerce. H.J. 268

3 2/4/99 Scheduled for Committee hearing on this date.

4 2/4/99 Commerce Do Pass Amended, Passed, AYES 12, NAYS 1. H.J. 363

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

400C0265

SENATE TRANSPORTATION COMMITTEE

ENGROSSED NO. **SB59** - 2/18/99

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsors.

Introduced by: The Committee on Transportation at the request of the Department of Transportation

1 FOR AN ACT ENTITLED, An Act to authorize the examination and use of commercial vehicle
2 weigh scale tickets in the enforcement of vehicle weight restrictions and to revise certain
3 provisions regarding penalties for violations of such restrictions.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That chapter 32-22 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 The Department of Transportation shall inspect all scale tickets issued by any weigh scale
8 operator for a vehicle being used in connection with the construction, repair, or maintenance of
9 a public highway pursuant to a contract administered by the Department of Transportation for
10 compliance with the weight limitations imposed by this chapter. The Department of
11 Transportation shall report any offenders to the Department of Commerce and Regulation.

12 Section 2. That § 32-2-8.1 be amended to read as follows:

13 32-2-8.1. Arrest powers for motor carrier inspectors employed by the Division of Highway
14 Patrol are limited to violations of chapters 10-47A, 32-5, 32-9, 32-10, 32-12, 32-22, 49-28, and
15 49-28A and §§ 50-4-13 to 50-4-17, inclusive, and § 32-33-17, and the rules governing operation

1 of motor carriers. Motor carrier inspectors who have been given such limited arrest powers are
2 not considered "law enforcement officers" for the purposes of § 23-3-27.

3 Section 3. That chapter 32-22 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 Any agent, patrolman, motor carrier inspector, or employee of the Department of Commerce
6 and Regulation may enter any place maintaining a vehicle scale used in commercial trade and
7 inspect and take copies of any scale ticket issued within the last six months by the agency
8 performing the weighing service in accordance with chapter 37-22A.

9 Section 4. That chapter 32-22 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 Both the driver of the vehicle and the shipper of the vehicle's load shall be jointly and
12 severally liable for the payment of any civil penalties provided by law for a violation of chapter
13 32-22.

14 Section 5. That § 32-22-56 be amended to read as follows:

15 32-22-56. In any case where the motor vehicle is absolutely overweight beyond ~~the greatest~~
16 ~~permissible compensation plate weights for a vehicle of its class~~ ten thousand pounds, the pounds
17 by which the vehicle is so overweight ~~may~~ shall be assessed at double the penalties prescribed
18 in § 32-22-55.

19 Section 6. That chapter 32-22 be amended by adding thereto a NEW SECTION to read as
20 follows:

21 Any county highway superintendent or municipal street superintendent may inspect any scale
22 ticket issued by any wight scale operator for a vehicle being used in connection with removal of
23 construction aggregate from a county-permitted gravel pit or for the construction, repair, or
24 maintenance of a public highway pursuant to a contract administered by the county or the
25 municipality for compliance with the weight limitations imposed by this chapter.

1 **BILL HISTORY**

2 1/12/99 First read in Senate and referred to Transportation. S.J. 26

3 1/21/99 Scheduled for Committee hearing on this date.

4 1/28/99 Scheduled for Committee hearing on this date.

5 2/11/99 Scheduled for Committee hearing on this date.

6 2/11/99 Transportation Deferred to another day.

7 2/16/99 Scheduled for Committee hearing on this date.

8 2/18/99 Scheduled for Committee hearing on this date.

9 2/18/99 Transportation Do Pass Amended, Passed, AYES 4, NAYS 3.

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

119C0346

SENATE APPROPRIATIONS COMMITTEE

ENGROSSED NO. **SB89** - 2/18/99

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsors.

Introduced by: Senators Hutmacher, Duxbury, Lange, Moore, and Reedy and Representatives Lucas, Burg, Fischer-Clemens, Hagen, Haley, Koetzle, McIntyre, Nachtigal, Patterson, and Waltman

1 FOR AN ACT ENTITLED, An Act to clarify average daily membership in the state aid to
2 education formula.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Students attending the Black Hills Forest High School in Lawrence County may
5 not be included by any school district in its average daily membership for purposes of state aid
6 to education.

1 **BILL HISTORY**

2 1/21/99 First read in Senate and referred to Appropriations. S.J. 146

3 1/26/99 Scheduled for Committee hearing on this date.

4 2/17/99 Appropriations Hog Housed.

5 2/17/99 Appropriations Hog Housed.

6 2/17/99 Scheduled for Committee hearing on this date.

7 2/17/99 Appropriations Do Pass Amended, Passed, AYES 10, NAYS 0. S.J. 516

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

364C0465

SENATE TRANSPORTATION COMMITTEE

ENGROSSED NO. **SB101** - 2/18/99

Introduced by: Senators Munson (David), Moore, and Staggers and Representatives Kooistra, Chicoine, and Volesky

1 FOR AN ACT ENTITLED, An Act to revise the formula for assigning assessed railroad
2 valuation to counties.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 10-28-16 be amended to read as follows:

5 10-28-16. The Department of Revenue shall, on or before the fourth Monday in August, each
6 year, transmit to the county auditor of each county through which any railroad runs, a statement
7 showing the length of main track, of main line or lines, and the branches thereof and sidetracks
8 within such county, and the assessed value based on a statewide formula that weights traffic (ton
9 miles) ~~seventy-five~~ thirty-three and one-third percent and miles of track in the county by
10 ~~twenty-five~~ sixty-six and two-thirds percent. The county auditor shall then distribute the value
11 to each taxing district where the line runs on a per mile basis within the county.

12 Section 2. This Act does not become effective until § 10-28-21.1 is repealed.

1 **BILL HISTORY**

2 1/22/99 First read in Senate and referred to Transportation. S.J. 160

3 2/11/99 Scheduled for Committee hearing on this date.

4 2/16/99 Scheduled for Committee hearing on this date.

5 2/18/99 Scheduled for Committee hearing on this date.

6 2/18/99 Transportation Do Pass Amended, Passed, AYES 4, NAYS 3.

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

903C0629

SENATE APPROPRIATIONS COMMITTEE

ENGROSSED NO. **SB164** - 2/18/99

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsors.

Introduced by: Senators Kloucek and Lange and Representatives Chicoine, Hanson,
Kazmerzak, Lockner, Lucas, and Nachtigal

1 FOR AN ACT ENTITLED, An Act to regulate certain livestock packer transactions.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. Terms used in this Act mean:

4 (1) "Livestock," live cattle, swine, or sheep;

5 (2) "Packer," a person who is engaged in the business of slaughtering livestock or
6 receiving, purchasing, or soliciting livestock for slaughtering, the meat products of
7 which are directly or indirectly to be offered for resale or for public consumption.

8 Packer includes an agent of the packer engaged in buying or soliciting livestock for
9 slaughter on behalf of a packer. Packer does not include a cold storage plant or frozen
10 food locker plant.

11 Section 2. A packer purchasing or soliciting livestock for slaughter in this state may not
12 discriminate in prices paid or offered to be paid to sellers of that livestock. This section does not
13 apply to the sale and purchase of livestock if the following requirements are met:

14 (1) The price differential is based on the quality of the livestock, if the packer purchases
15 or solicits the livestock based upon a payment method specifying prices paid for

1 criteria relating to carcass merit; actual and quantifiable costs related to transporting
2 and acquiring the livestock by the packer; or an agreement for the delivery of
3 livestock at a specified date or time; and

4 (2) After making a differential payment to a seller, the packer publishes information
5 relating to the differential pricing, including the payment method for carcass merit,
6 transportation and acquisition pricing, and an offer to enter into an agreement for the
7 delivery of livestock at a specified date or time according to the same terms and
8 conditions offered to other sellers.

9 Section 3. A packer shall provide all sellers with the same terms and conditions offered to
10 a seller who receives a differential price based on any of the criteria described in section 2 of this
11 Act.

12 Section 4. A packer shall, at the end of each day during which livestock are purchased or
13 contracted, provide to the United States Department of Agriculture, agricultural market service
14 livestock market news branch, and the South Dakota Department of Agriculture, all prices paid
15 for livestock, both contract and direct purchased, that day.

16 Section 5. Any agreement made by a packer in violation of this Act is voidable. Any packer
17 acting in violation of this section is guilty of a fraudulent practice.

18 Section 6. The attorney general shall enforce the provisions of this Act and the Department
19 of Agriculture shall refer any violations of these provisions to the attorney general. The attorney
20 general or any person injured by a violation of these provisions may bring an action in circuit
21 court to restrain a packer from violating these provisions. A seller who receives a discriminatory
22 price or who is offered only a discriminatory price for livestock based upon a violation of these
23 provisions by a packer has a civil cause of action against the packer and, if successful, shall be
24 awarded treble damages.

25 Section 7. Any packer shall make available for publication and to the Department of

1 Agriculture, a daily report setting forth information regarding prices paid for livestock, under
2 each contract in force, in which the packer and a South Dakota resident are parties for the
3 purchase of the livestock by the packer, and which sets a date for delivery more than twenty days
4 after the making of the contract.

5 The reports shall be completed on forms prepared by the department for comparison with
6 cash market prices for livestock according to procedures required by the department in rules
7 promulgated pursuant to chapter 1-26. The report may not include information regarding the
8 identity of a seller.

9 A failure of a packer to report as required by this section is punishable by a civil penalty not
10 to exceed ten percent of the packer's gross purchases within the period of violation. The
11 department shall refer to the attorney general any packer or packer's agent who the department
12 believes is in violation of the provisions of this Act. The attorney general may, upon referral from
13 the department, file an action in circuit court to enforce these provisions.

14 Section 8. This Act shall take effect when the legislatures of the states of Minnesota, Iowa,
15 Wyoming, and Nebraska have enacted substantially similar legislation. The attorney general of
16 South Dakota may be notified by any South Dakota citizen of said enactments and within thirty
17 days shall substantiate the legislative enactments and enforce the provisions of this Act.

18 Section 9. In the event the provisions of section 8 are not fulfilled, the Senate engrossed
19 version of Senate Bill 95 is hereby repealed.

1 **BILL HISTORY**

2 1/27/99 First read in Senate and referred to Appropriations. S.J. 214

3 2/3/99 Scheduled for Committee hearing on this date.

4 2/17/99 Appropriations Hog Housed.

5 2/17/99 Scheduled for Committee hearing on this date.

6 2/17/99 Appropriations Do Pass Amended, Passed, AYES 7, NAYS 3. S.J. 514

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

448C0769

SENATE JUDICIARY COMMITTEE ENGROSSED NO. **SB203** - 2/16/99

Introduced by: Senator Everist and Representatives Michels and Wilson

1 FOR AN ACT ENTITLED, An Act to enact the Uniform Prudent Investor Act.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. (a) Except as otherwise provided in subsection (b), a trustee who invests and
4 manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent
5 investor rule set forth in this Act.

6 (b) The prudent investor rule, a default rule, may be expanded, restricted, eliminated, or
7 otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary to the extent
8 that the trustee acted in reasonable reliance on the provisions of the trust.

9 Section 2. (a) A trustee shall invest and manage trust assets as a prudent investor would, by
10 considering the purposes, terms, distribution requirements, and other circumstances of the trust.
11 In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

12 (b) A trustee's investment and management decisions respecting individual assets must be
13 evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an
14 overall investment strategy having risk and return objectives reasonably suited to the trust.

15 (c) Among circumstances that a trustee shall consider in investing and managing trust assets
16 are such of the following as are relevant to the trust or its beneficiaries:

- 1 (1) General economic conditions;
- 2 (2) The possible effect of inflation or deflation;
- 3 (3) The expected tax consequences of investment decisions or strategies;
- 4 (4) The role that each investment or course of action plays within the overall trust
- 5 portfolio, which may include financial assets, interests in closely held enterprises,
- 6 tangible and intangible personal property, and real property;
- 7 (5) The expected total return from income and the appreciation of capital;
- 8 (6) Other resources of the beneficiaries;
- 9 (7) Needs for liquidity, regularity of income, and preservation or appreciation of capital;
- 10 and
- 11 (8) An asset's special relationship or special value, if any, to the purposes of the trust or
- 12 to one or more of the beneficiaries.

13 (d) A trustee shall make a reasonable effort to verify facts relevant to the investment and
14 management of trust assets.

15 (e) A trustee may invest in any kind of property or type of investment consistent with the
16 standards of this Act.

17 (f) A trustee who has special skills or expertise, or is named trustee in reliance upon the
18 trustee's representation that the trustee has special skills or expertise, has a duty to use those
19 special skills or expertise.

20 Section 3. A trustee shall diversify the investments of the trust unless the trustee reasonably
21 determines that, because of special circumstances, the purposes of the trust are better served
22 without diversifying.

23 Section 4. Within a reasonable time after accepting a trusteeship or receiving trust assets, a
24 trustee shall review the trust assets and make and implement decisions concerning the retention
25 and disposition of assets, in order to bring the trust portfolio into compliance with the purposes,

1 terms, distribution requirements, and other circumstances of the trust, and with the requirements
2 of this Act.

3 Section 5. A trustee shall invest and manage the trust assets solely in the interest of the
4 beneficiaries.

5 Section 6. If a trust has two or more beneficiaries, the trustee shall act impartially in investing
6 and managing the trust assets, taking into account any differing interests of the beneficiaries.

7 Section 7. In investing and managing trust assets, a trustee may only incur costs that are
8 appropriate and reasonable in relation to the assets, the purposes of the trust, and the skills of
9 the trustee.

10 Section 8. Compliance with the prudent investor rule is determined in light of the facts and
11 circumstances existing at the time of a trustee's decision or action and not by hindsight.

12 Section 9. (a) A trustee may delegate investment and management functions that a prudent
13 trustee of comparable skills could properly delegate under the circumstances. The trustee shall
14 exercise reasonable care, skill, and caution in:

- 15 (1) Selecting an agent;
- 16 (2) Establishing the scope and terms of the delegation, consistent with the purposes and
17 terms of the trust; and
- 18 (3) Periodically reviewing the agent's actions in order to monitor the agent's performance
19 and compliance with the terms of the delegation.

20 If the trustee obtains the written approval of a majority of the known beneficiaries or is
21 directed by the court, the trustee is not liable for the acts of the person to whom the authority
22 is delegated except in the cases of gross misconduct or gross negligence by the delegating trustee
23 in the selection, establishing the scope and terms of the delegation or reviewing the agent's
24 actions.

25 (b) In performing a delegated function, an agent owes a duty to the trust to exercise

1 reasonable care to comply with the terms of the delegation.

2 (c) A trustee who complies with the requirements of subsection (a) is not liable to the
3 beneficiaries or to the trust for the decisions or actions of the agent to whom the function was
4 delegated.

5 (d) By accepting the delegation of a trust function from the trustee of a trust that is subject
6 to the law of this state, an agent submits to the jurisdiction of the courts of this state.

7 Section 10. The following terms or comparable language in the provisions of a trust, unless
8 otherwise limited or modified, authorizes any investment or strategy permitted under this Act:
9 investments permissible by law for investment of trust funds; legal investments; authorized
10 investments; using the judgment and care under the circumstances then prevailing that persons
11 of prudence, discretion, and intelligence exercise in the management of their own affairs, not in
12 regard to speculation but in regard to the permanent disposition of their funds, considering the
13 probable income as well as the probable safety of their capital; prudent man rule; prudent trustee
14 rule; prudent person rule; and prudent investor rule.

15 Section 11. This Act applies to trusts existing on and created after its effective date. As
16 applied to trusts existing on its effective date, this Act governs only decisions or actions
17 occurring after that date.

18 Section 12. This Act shall be applied and construed to effectuate its general purpose to make
19 uniform the law with respect to the subject of this Act among the states enacting it.

20 Section 13. This Act may be cited as the South Dakota Uniform Prudent Investor Act.

21 Section 14. That § 55-5-6 be repealed.

22 ~~55-5-6. The trustee shall invest and manage trust assets as a prudent investor would~~
23 ~~considering the purposes, terms, distribution requirements, and other circumstances of the trust.~~
24 ~~This standard requires the exercise of reasonable care, skill, and caution and shall be applied to~~
25 ~~investments not in isolation, but in the context of the trust portfolio as a whole and as a part of~~

1 ~~an overall investment strategy that should incorporate risk and return objectives reasonably~~
2 ~~suitable to the trust.~~

3 Section 15. That §§ 55-5-7 to 55-5-16, inclusive, be repealed.

1 **BILL HISTORY**

2 1/28/99 First read in Senate and referred to Judiciary. S.J. 234

3 2/1/99 Scheduled for Committee hearing on this date.

4 2/10/99 Scheduled for Committee hearing on this date.

5 2/12/99 Scheduled for Committee hearing on this date.

6 2/12/99 Judiciary Do Pass Amended, Passed, AYES 7, NAYS 0. S.J. 474

7 2/12/99 Judiciary Place on Consent Calendar.

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

534C0668

SENATE EDUCATION COMMITTEE

ENGROSSED NO. **SB208** - 2/18/99

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsors.

Introduced by: Senators Reedy, Dennert, Dunn (Rebecca), Duxbury, Flowers, Hutmacher, Kloucek, Lange, Lawler, Moore, Olson, and Symens and Representatives Lucas, Burg, Cerny, Chicoine, Davis, Fischer-Clemens, Hagen, Haley, Hanson, Kazmerzak, Koetzle, Lockner, McIntyre, Nachtigal, Patterson, Sutton (Daniel), Volesky, Waltman, and Wilson

1 FOR AN ACT ENTITLED, An Act to create the Postsecondary Education Advance Payment
2 Plan Task Force.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. There is hereby created the Postsecondary Education Advance Payment Program
5 Task Force to study the feasibility of a program allowing for the advance payment of tuition.
6 The task force shall consist of the executive director of the Board of Regents, the director of the
7 Division of Workforce and Career Preparation in the Department of Education and Cultural
8 Affairs, the state treasurer and two members of each house of the Legislature appointed by the
9 Executive Board of the Legislative Research Council.

10 Section 2. The study shall include possible policies and procedures governing the:

- 11 (1) Receipt of payments from purchasers on behalf of beneficiaries;
- 12 (2) Accounting and reporting to purchasers of payments deposited and invested pursuant
13 to an advanced payment contract;
- 14 (3) Period of time during which the beneficiary may receive benefits under the contract;

- 1 (4) Terms and conditions under which contracts may be terminated or modified, refunds
2 may be granted and direct payment of benefits may be made;
- 3 (5) Provisions of contract benefits at institutions of higher education and other
4 postsecondary institutions;
- 5 (6) Payment to institutions of higher education and other postsecondary institutions on
6 behalf of beneficiaries;
- 7 (7) Imposition of fees to cover costs incurred for the administration of this program; and
- 8 (8) Other terms, conditions, and provisions determined necessary for advanced payment
9 contracts and benefits provided under those contracts.

10 Section 3. The task force shall complete its work and report to the Legislature by January 1,
11 2001.

1 **BILL HISTORY**

2 1/29/99 First read in Senate and referred to Education. S.J. 254

3 2/9/99 Scheduled for Committee hearing on this date.

4 2/11/99 Scheduled for Committee hearing on this date.

5 2/16/99 Scheduled for Committee hearing on this date.

6 2/18/99 Scheduled for Committee hearing on this date.

7 2/18/99 Education Do Pass Amended, Passed, AYES 6, NAYS 1.

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

400C0757

SENATE STATE AFFAIRS COMMITTEE

ENGROSSED NO. **SB210** - 2/18/99

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsors.

Introduced by: The Committee on State Affairs at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to provide mandatory prison sentences for certain violations
2 regarding controlled substances and marijuana, to provide for certain rewards, and to make
3 an appropriation for such rewards.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That chapter 22-42 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 Any person who has been convicted of a violation of §§ 22-42-2.1, 22-42-3 to 22-42-4.1,
8 inclusive, 22-42-5 to 22-42-8, inclusive, 22-42-10, 22-42-16, 22-42-19, 34-20B-42, and 34-20B-
9 46 shall, in addition to any other penalties, be remanded to the custody of the Department of
10 Corrections for a period of ten days, no part of which may be waived or suspended except as
11 provided in § 22-42-2.3. The secretary of the Department of Corrections shall assign the person
12 to an institution under the jurisdiction of the secretary.

13 Section 2. That § 22-42-2.3 be amended to read as follows:

14 22-42-2.3. The sentencing court may impose a sentence other than that which is required by
15 § 22-42-2 and section 1 of this Act if the court finds that mitigating circumstances exist which
16 require a departure from the mandatory sentence imposed by § 22-42-2 or section 1 of this Act.

The court's finding of mitigating circumstances allowed by this section and the factual basis relied upon by the court shall be in writing and shall be filed with the clerk of courts.

Section 3. The mandatory incarceration provisions of section 1 of this Act do not apply to a child, as defined in subdivision 26-7A-1(6), unless the child is tried as an adult pursuant to § 26-11-3.1 or 26-11-4.

Section 4. Notwithstanding the provisions of § 22-1-4, crimes otherwise denominated as misdemeanors whose penalty includes an additional ten-day incarceration in the custody of the Department of Corrections pursuant to section 1 of this Act shall remain classified as misdemeanors.

Section 5. The provisions of § 23A-27-35 do not apply to any person whose sentence includes no more than ten days incarceration in the custody of the Department of Corrections.

Section 6. That § 22-6-2 be amended to read as follows:

22-6-2. Except as otherwise provided by law, misdemeanors are divided into two classes which are distinguished from each other by the following maximum penalties which are authorized upon conviction:

(1) Class 1 misdemeanor: one year imprisonment in a county jail or one thousand dollars fine, or both;

(2) Class 2 misdemeanor: thirty days imprisonment in a county jail or two hundred dollars fine, or both.

Misdemeanors may include incarceration in the custody of the Department of Corrections as provided in section 1 of this Act.

The court in imposing sentence on a defendant who has been found guilty of a misdemeanor shall order, in addition to the sentence that is imposed pursuant to the provisions of this section, that the defendant make restitution to any victim in accordance with the provisions of chapter 23A-28.

1 Except in cases where punishment is prescribed by law, every offense declared to be a
2 misdemeanor and not otherwise classified, is a Class 2 misdemeanor.

3 Except in Titles 1 to 20, inclusive, 22, 25 to 28, inclusive, 32 to 36, inclusive, 40 to 42,
4 inclusive, 47 to 54, inclusive, and 58 to 62, inclusive, if the performance of an act is prohibited
5 by a statute, and no penalty for the violation of such statute is imposed by a statute, the doing
6 of such act is a Class 2 misdemeanor.

7 Section 7. That § 26-8C-4 be amended to read as follows:

8 26-8C-4. If the court is satisfied that the best interests of the public, justice and child will be
9 served, the court may, without entering an adjudication of delinquency, with consent of the child,
10 suspend imposition of adjudication of delinquency and place the child on probation under the
11 terms, conditions, and duration required by the court. If the proceeding involves the unlawful
12 possession or distribution of marijuana or a controlled drug or substance, the court shall include
13 as a condition of probation that the child be committed to the Department of Corrections for a
14 period of not less than ten days which may not be reduced unless the court finds mitigating
15 circumstances exist which require a departure from the mandatory ten-day incarceration in the
16 custody of the Department of Corrections. The court's finding of mitigating circumstances
17 allowed by this section and the factual basis relied upon by the court shall be in writing. A court
18 may revoke the suspension at any time during the probationary period and impose an
19 adjudication of delinquency without diminishment or credit for any of the probationary period.

20 Section 8. That § 26-8C-7 be amended to read as follows:

21 26-8C-7. If Except as provided in section 7 of this Act, if a child has been adjudicated as a
22 delinquent child, the court shall enter a decree of disposition according to the least restrictive
23 alternative available in keeping with the best interests of the child. The decree shall contain one
24 or more of the following alternatives:

25 (1) The court may make any one or more of the dispositions in § 26-8B-6, except that

a delinquent child may be incarcerated in a detention facility established pursuant to provisions of chapter 26-7A for not more than ninety days, which may be in addition to any period of temporary custody;

(2) The court may impose a fine not to exceed one thousand dollars;

(3) The court may place the child on probation under the supervision of a court services officer or another designated individual. The child may be required as a condition of probation to report for assignment to a supervised work program, provided the child is not deprived of the schooling that is appropriate for the child's age, needs and specific rehabilitative goals. The supervised work program shall be of a constructive nature designed to promote rehabilitation, appropriate to the age level and physical ability of the child, and shall be combined with counseling by the court services officer or other guidance personnel. The supervised work program assignment shall be made for a period of time consistent with the child's best interests, but for not more than ninety days;

(4) The court may place the child at the Human Services Center for examination and treatment;

(5) The court may commit the child to the Department of Corrections;

(6) The court may place the child in a detention facility for not more than ninety days, which may be in addition to any period of temporary custody;

(7) The court may place the child in an alternative educational program;

(8) The court may order the suspension or revocation of the child's driving privilege or restrict the privilege in such manner as it sees fit.

Section 9. That chapter 26-8C be amended by adding thereto a NEW SECTION to read as follows:

If a child has been adjudicated as a delinquent child for a violation of state law regarding the

1 possession or distribution of marijuana or a controlled drug or substance, the court shall enter
2 a decree of disposition committing the child to the Department of Corrections for a period of not
3 less than ten days unless the court finds mitigating circumstances exist which require a departure
4 from the mandatory ten-day incarceration in the custody of the Department of Corrections. The
5 court's finding of mitigating circumstances allowed by this section and the factual basis relied
6 upon by the court shall be in writing. Probation, suspended imposition of adjudication of
7 delinquency, suspended execution of adjudication of delinquency, or discharged under § 26-7A-
8 122 may not form the basis for reducing the mandatory time of commitment required by this
9 section to less than ten days.

10 Section 10. That chapter 22-42 be amended by adding thereto a NEW SECTION to read as
11 follows:

12 The Governor may offer a standing reward of not more than one thousand dollars for
13 evidence leading to the arrest and conviction of any person or persons guilty of any violation of
14 chapter 22-42, § 34-20B-42, or 34-20B-46. The Governor may also offer special rewards in
15 reasonable amounts for the purpose of securing the arrest and conviction of any person or
16 persons charged with a felony under this section.

17 Section 11. There is hereby appropriated from the general fund the sum of one million dollars
18 (\$1,000,000), or so much thereof as may be necessary, to the Office of the Governor for the
19 purpose of making payments for the rewards authorized in section 10 of this Act.

20 Section 12. The Governor shall approve vouchers and the state auditor shall draw warrants
21 to pay expenditures authorized by this Act.

1 **BILL HISTORY**

2 1/29/99 First read in Senate and referred to State Affairs. S.J. 254

3 2/8/99 Scheduled for Committee hearing on this date.

4 2/8/99 Scheduled for Committee hearing on this date.

5 2/10/99 Scheduled for Committee hearing on this date.

6 2/17/99 Scheduled for Committee hearing on this date.

7 2/17/99 State Affairs Do Pass Amended, Passed, AYES 5, NAYS 3.